



## *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*

PIEDMONT REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

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Director

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Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO**

**Tarrington Holdings, LLC  
(Tarrington on the James – Phase III)  
Virginia Water Resources and Wetlands  
Protection Program Permit No. WP16-0569**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Tarrington Holdings, LLC (hereinafter referred to as "Tarrington"), regarding the Tarrington on the James – Phase III development in Chesterfield County, Virginia (hereinafter referred to as the "Property"), for the purpose of resolving certain violations of the State Water Control Law and applicable permit requirements and/or regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Construction Activity" means any clearing, grading or excavating resulting in land disturbance of equal to or great than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or great than one acre.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
9. "Impacts" means results caused by those activities specified in §62.1-44.15:20A of the Code of Virginia.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge

or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "Property" or "Parcel" means the Tarrington Subdivision, located on a tract of land located north of Robious Road (Route 711), east of James River Road, west of Old Gun Road W, and south of the James River, in Chesterfield County, Virginia.
16. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
17. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
18. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural condition.
19. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
21. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
22. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
23. "Tarrington" means Tarrington Holdings, LLC, a company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. Tarrington is a "person" within the meaning of Va. Code § 62.1-44.3.
24. "USACE" means the United States Army Corps of Engineers.
25. "Va. Code" means the Code of Virginia (1950), as amended.



26. "VAC" means the Virginia Administrative Code.
27. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.
28. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Tarrington owns and operates a subdivision and development at the Property in Chesterfield County, Virginia. The project is covered by VWP Individual Permit No. 16-0569, effective October 12, 2016, authorizing permanent impacts to 0.062 acre of palustrine forested wetland and 492 LF of streambed. Temporary impacts were authorized to 102 LF of streambed.
2. On August 24, 2018, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and Regulations, and Permit requirements. DEQ staff observed that uncontrolled stormwater has resulted in physical alteration of approximately 360 linear feet of stream bed between Ashwell Drive and Bircham Loop, including severe stream bank erosion and instability. These impacts were not authorized by the Permit.

Va. Code § 62.1-44.15:20A and 9 VAC 25-210-50(A) prohibit alteration of the physical, chemical or biological properties of state waters and make them detrimental to public health, animal or aquatic life, without a Permit.

3. DEQ staff also observed unauthorized discharge of sediment, a pollutant, resulting in impacts to 758 linear feet ("LF") of stream and 0.01 acre of palustrine forested wetlands in the project area between Ashwell Drive and Bircham Loop, and unauthorized discharge of sediment resulting in impacts to 785 LF of stream in the area downstream of Impacts 18 and 21. These impacts were not authorized by the Permit.

Va. Code § 62.1-44.15:20A, 9 VAC 25-210-50(A) prohibit the discharge of any pollutant into or adjacent to surface waters, or to otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to public health, animal or aquatic life without a Permit.

Permit Part I.A places limitations on the amount and locations of impacts authorized by the Permit.

4. DEQ staff reported that erosion and sediment controls (“E&S controls”) were not properly maintained in numerous areas of the site, resulting in the impacts downstream of Impacts 18 and 21, described above.

VWP Individual Permit 16-0569 Part I.C.24 requires that erosion and sedimentation controls be designed in accordance with the *Virginia Erosion and Sediment Control Handbook* (3rd Ed. 1992). Controls shall be maintained in good working order to minimize impacts to state waters.

5. DEQ staff reported exposed rip-rap placed in the stream channel at Impact 21 was not removed or adequately covered. The Permit authorized this area as a temporary impact area.

VWP Individual Permit 16-0569 Part I.C.19 requires that all temporarily impacted streams and stream banks shall be restored to their original elevations and contours within 30 calendar days following the construction at that stream segment, and the banks be seeded or planted with the same vegetative cover type originally present along the banks, including supplemental erosion control grasses if necessary but not including invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

6. DEQ staff reported that the semi-annual Construction Status Update Report due in July, 2018 was not received by DEQ.

VWP Individual Permit 16-0569 Part I.H.4 requires that a semi-annual Construction Status Update shall be completed in June and December of every year during the term of the permit. The Construction Status Update shall include reference to the VWP individual permit authorization number and one of the following statements: a) construction activity in authorized impact areas has not yet commenced; b) construction activity within authorized impact areas has commenced; c) construction activity in authorized impact areas has commenced but is currently suspended; or d) all authorized impacts are complete.

7. On September 14, 2018, NOV No. 1809-000867 was issued to Tarrington, providing notice of the observations cited in C(2) through C(6) above.
8. On December 19, 2018, DEQ staff met with Tarrington representatives to evaluate progress of corrective action. Although progress to complete some corrective action items was evident, Tarrington did not fully achieve compliance. A January 8, 2019 Inspection Report was issued to Tarrington requesting further action for remaining items, including: a) completion of sediment removal from all impacted areas by January 19, 2019; b) completion of a corrective action plan addressing erosion and sediment transport by January 15, 2019; and c) stabilization of a sanitary sewer easement and stream bank above Impact 21.
9. Staff subsequently met with Tarrington again on March 22, 2019, and determined that sufficient corrective action was taken to warrant no further action for the violations

described in Paragraphs C (4) thru (6). Violations describe in Paragraphs C (2) thru (3) require further corrective action and are addressed in the Schedule of Compliance attached to this Order as Appendix A.

10. The Property affects an unknown tributary to Salles Creek draining to the James River (James River Basin – Middle). The unknown tributary was not assessed as part of the 2016 305(b)/303(d) Water Quality Assessment, and is considered a Category 3A water. Salles Creek is considered a Category 4A water. The stream is impaired for Recreation Use due to E. coli exceedances. The Aquatic Life Use and Wildlife Use were fully supporting with observed effects due to an exceedance of the chronic water quality standard for ammonia. The Fish Consumption Use and Public Water Supply Use were not assessed. Salles Creek is a Tier 2 water body. The Property is located within the study area for the James River and Tributaries – City of Richmond Bacterial Total Maximum Daily Load (TMDL). It is also located in the Chesapeake Bay watershed and is subject to the Chesapeake Bay TMDL for total nitrogen, total phosphorus, and total suspended solids.
11. Based on the foregoing information, the Board concludes that Tarrington violated Va. Code § 62.1-44.15:20(A), 9 VAC 25-210-50(A), and requirements at VWP Individual Permit WP16-0569 Parts I.A, I.C.19 & 24, and I.H.4.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Tarrington, and Tarrington agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$36,225** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Tarrington shall include its Federal Employer Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department is required to refer collection of moneys due under this Order to the Department of Law, Tarrington shall be liable for attorneys' fees of 30% of the amount outstanding.



**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Tarrington for good cause shown by Tarrington, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Tarrington admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Tarrington consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tarrington declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Tarrington to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tarrington shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Tarrington shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tarrington shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tarrington. Nevertheless, Tarrington agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Tarrington has completed all of the requirements of the Order;
  - b. Tarrington petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Tarrington.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tarrington from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Tarrington and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Tarrington certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and



legally bind Tarrington to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Tarrington.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Tarrington voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of September, 2019.



(FOR)

James Golden, Regional Director  
Department of Environmental Quality

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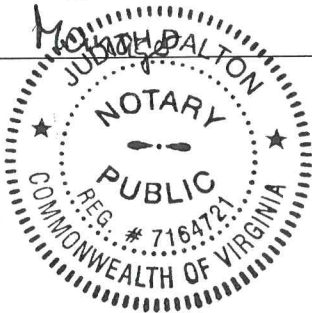
Tarrington Holdings, LLC voluntarily agrees to the issuance of this Order.

Date: July 23, 2019 By: [Signature], Richard W. NUCKOLS  
Tarrington Holdings, LLC Principle MANAGER

Commonwealth of Virginia  
City/County of Flem Allen

The foregoing document was signed and acknowledged before me this 23<sup>rd</sup> day of  
July, 2019, by Judith Dalton Richard Nuckols who is

Montgomery of Tarrington Holdings, LLC on behalf of the company.



Judith Dalton  
Notary Public

7164721  
Registration No.

My commission expires: 3/31/2020

Notary seal:

## APPENDIX A SCHEDULE OF COMPLIANCE

**1. Sediment Removal from Impacted Areas:** Tarrington shall immediately remove all sediment impacting the 758 LF of stream and 0.01 acre of palustrine wetlands in the project area between Ashwell Drive and Bircham Loop, as described in DEQ Inspection Report dated September 6, 2018. Additionally, Tarrington shall immediately remove all sediment impacting the 785 LF of stream in the area identified as downstream of Impacts 18 and 21, as described in DEQ's Inspection Report dated September 6, 2018. Sediment removal shall be complete no later than **April 1, 2019**.

Tarrington shall provide an updated Work Completion Report to DEQ **within 30 days** of full sediment removal. The Work Completion Report is subject to DEQ review and approval, and shall, at a minimum, include a narrative description of work, dates performed, and digital imagery of the work areas confirming work completion. Tarrington shall respond to any DEQ Notice of Deficiency regarding the Work Completion Report within 14 calendar days.

**2. Restoration Corrective Action Plan (RCAP):** Tarrington shall submit for DEQ's review and approval an RCAP describing measures to address streambank erosion and sediment transport in Sections 11 and 17 of the Tarrington Subdivision, between Ashwell Drive and Bircham Loop. The RCAP shall include a description of techniques proposed to prevent additional streambank erosion and the transport of sediment that resulted in the impacts described in this Order. Tarrington shall provide the following information by **July 1, 2019, 2019**:

- a. A detailed narrative description of the proposed restoration plan necessary to stabilize stream banks and reduce sediment transport downstream;
- b. The goals and objectives of the plan to restore water resource functions and water quality benefits;
- c. An evaluation, discussion, and plan sketches of existing conditions of proposed restoration areas, including the identification of functional and physical deficiencies for which restoration measures are proposed;
- d. A summary of stream geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
- e. A plan view sketch depicting the pattern and all compensation measures employed, a profile sketch, and cross-section sketches of the proposed stream restoration;
- f. Detailed design information for the proposed measures, including geomorphological measurements and reference reach information, as appropriate;
- g. Planting scheme and schedule, indicating species, buffer width, and acreage of each vegetation type proposed;
- h. A site access plan, if appropriate;
- i. An erosion and sedimentation control plan, if appropriate;



j. A schedule for restoration measure construction, including projected start date, sequence of events with projected dates, a timeline of work completed to date, and projected completion date;

k. Performance criteria used to determine success of the restoration;

l. A monitoring plan that includes regularly scheduled monitoring; reporting; monitoring design and methodologies to evaluate the success of the stream areas subject to replanting, including comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference areas;

m. A repair and maintenance plan for the restoration project.

(1). Upon review of the RCAP, DEQ may request plan modifications, clarification or information, and Tarrington shall comply with such request within the timeframe provided within the request.

(2). All work shall be completed in accordance with the RCAP and approved schedule therein. All site work must be completed no later than the date provided in the RCAP schedule approved by DEQ. No changes may be made to the RCAP without prior written approval by DEQ.

(3). Tarrington shall provide a Work Completion Report to DEQ within 30 days of construction completion of the RCAP. The Work Completion Report shall, at a minimum, include a narrative description of work, dates performed, and digital imagery of the work areas confirming work is complete.

(4). If the performance criteria specified in the RCAP are not achieved at the end of any monitoring period proscribed in the monitoring plan referenced in Paragraph B.12 above, then Tarrington shall so advise DEQ in the applicable monitoring report for that monitoring period, Tarrington shall describe why the criteria were not achieved, and shall identify and propose an Amended RCAP and schedule for DEQ review and approval, to achieve the performance criteria. Tarrington shall respond to any DEQ Notice of Deficiency regarding the Amended RCAP within 14 calendar days and shall implement the DEQ-approved Amended RCAP in accordance with the terms and schedule therein.